

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 1515 Protecting Urban and Residential Environments and Water
SPONSOR(S): General Government Policy Council, Civil Justice and Courts Committee, Agriculture & Natural Resources Policy Committee, Murzin and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 494

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Agriculture & Natural Resources Policy Committee	15 Y, 1 N, As CS	Blalock	Reese
2)	Civil Justice & Courts Policy Committee	9 Y, 0 N, As CS	DeZego	De La Paz
3)	General Government Policy Council	15 Y, 0 N, As CS	Blalock	Hamby
4)	Natural Resources Appropriations Committee			
5)				

SUMMARY ANALYSIS

This bill establishes the following provisions related to automatic landscape irrigations systems and the application of fertilizer in Florida:

- Requires the Department of Environmental Protection (DEP) to create a model ordinance regarding automatic landscape irrigation systems to be adopted by local governments;
- Encourages local governments to adopt and enforce the provisions in the DEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.
- Requires local governments located within a watershed of a water body or water segment that is listed by the DEP as impaired for nutrient load to adopt the provisions of DEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, and allows them to adopt more stringent provisions if certain criteria are met.
- Requires urban landscape commercial fertilizer applicators to obtain a certificate demonstrating completion of best management practices training program.
- Requires the DEP, in consultation with the Department of Agriculture and Consumer Services (DACS) and IFAS, to approve training programs and testing materials.
- Requires DACS to establish a limited certification category for urban landscape commercial fertilizer application and to adopt rules.
- Encourages DACS to create an on-line database that lists all certified urban landscape fertilizer applicators.
- Provides an exception from the requirements for fertilizer application if the fertilizer and equipment are supplied by the residential property owner or resident.

This bill appears to have a fiscal impact on the DEP's expenditures by requiring the DEP to approve training programs and testing materials equivalent to or more comprehensive than the best management practices training program. This bill also appears to have positive fiscal impact on the DACS.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Nutrient pollution, especially from nitrogen and phosphorus, has consistently ranked as one of the top causes of degradation in some United States waters for more than a decade.¹ Excess nitrogen and phosphorus lead to significant water quality problems including harmful algal blooms, hypoxia and declines in wildlife and wildlife habitat. Excesses have also been linked to higher amounts of chemicals that make people sick.²

Generally, water bodies require nutrients, such as nitrogen and phosphorus, to be healthy, but too many nutrients can be harmful. Many of the nation's waters, including streams, rivers, wetlands, estuaries, and coastal waters, are affected by nitrogen and phosphorus pollution. High levels of nitrogen and phosphorus in waters can produce harmful algal blooms. In turn, these blooms can produce "dead zones" in water bodies where dissolved oxygen levels are so low that most aquatic life cannot survive. This condition in water bodies is referred to as hypoxia.

Nitrogen and phosphorus enter the state's water bodies from point and non-point³ sources.

The primary contributors of nitrogen and phosphorous pollution are:

- Overusing fertilizer (both residential and agricultural usage);
- Rainfall flowing over cropland, animal feeding operations and pastures, picking up animal waste and depositing it in water bodies;
- Rainfall flowing over urban and suburban areas where stormwater management is not required (e.g., parking lots, lawns, rooftops, roads);
- Discharge of nitrogen and phosphorus from waste-water treatment plants; and
- Overflow from septic systems.

In general, non-point source pollution typically is significantly higher than the point sources of pollution. Therefore, in order to reduce the environmental impacts of nitrogen and phosphorous in the state's

¹ EPA website- <http://www.epa.gov/waterscience/criteria/nutrient>. Last accessed on March 25, 2009.

² *Id.*

³ A non-point source of pollution is one that is not readily and specifically identifiable. Webster's Encyclopedic Unabridged Dictionary, pg. 1315 (1996).

water bodies, it is important to limit the input of nitrogen and phosphorous from non-point sources. Furthermore, it is much more costly to remove nitrogen and phosphorous from water than to keep it from entering the water in the first place. As water quality criteria become more stringent and Total Maximum Daily Loads (TMDLs) for phosphorous and nitrogen in the state's water bodies are applied, limiting the amount of phosphorous and nitrogen that enters Florida's waters could be a cost-effective policy tool. A TMDL is the maximum amount of a given pollutant that a water body can absorb and still maintain its designated uses (e.g., drinking, fishing, swimming, shellfish harvesting). One water body may have several TMDLs, one for each pollutant that exceeds the water body's capacity to absorb it safely. Under section 303(d) of the Clean Water Act, states are required to develop lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet the water quality standards set by the states. The law requires that these jurisdictions establish priority rankings for waters on the lists and develop TMDLs for these waters.⁴

Effect of Bill

Automatic Landscape Irrigation Systems

This bill amends s. 373.62, F.S., regarding automatic landscape irrigation systems. This bill provides that licensed contractors who perform work on automatic landscape irrigation systems must test for the correct operation of each inhibiting device, interrupting device, or switch on the system. If the device or switch is not installed or is not in proper operating condition, then the contractor must install new ones or repair the existing ones before completing any other work for the system.

This bill requires the DEP to create a model ordinance regarding automatic landscape irrigation systems by January 15, 2010. The ordinance must, at a minimum, provide:

- Penalties for operators of automatic landscape irrigation systems who do not properly install and maintain the devices or switches. The minimum penalty must be \$50 for the first offense, \$100 for the second offense, and \$250 for subsequent offenses.
- A requirement that licensed contractors report automatic landscape irrigation systems that are not in compliance to the appropriate authority; and
- Penalties for licensed contractors who do not comply with the provisions of s. 373.62, F.S. The minimum penalty must be \$50 for the first offense, \$100 for the second offense, and \$250 for subsequent offenses.

Funds generated from the penalties must be used by local governments for administration and enforcement of s. 373.62, F.S., and to further water-conservation activities. Regular maintenance and replacement is not considered a violation of this section as long as such repairs are conducted within a reasonable time.

This bill provides that local governments must adopt the model ordinance by October 1, 2010. However, local governments that impose more stringent requirements than those of the model ordinance are exempt from the adopting the ordinance.

Protection of Urban and Residential Environments and Water Act

This bill creates s. 403.9338, F.S., to encourage all local governments to adopt and enforce the Department of Environmental Protection's (DEP) Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. The section also requires each local government that is located within the watershed⁵ of a water body or water segment that is listed by the DEP as impaired for nutrient levels to adopt the provisions of the DEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban

⁴ EPA website- <http://www.epa.gov/OWOW/tmdl/>. Last accessed on March 25, 2009.

⁵ A watershed is the geographic area through which water flows across the land and drains into a common body of water, whether a stream, river, lake, or ocean. See <http://www.dep.state.fl.us/water/watersheds/index.htm>. Last accessed on March 25, 2009.

Landscapes. A local government can adopt additional or more stringent provisions than the DEP's model ordinance if the following criteria are met:

- The local government has demonstrated that additional or more stringent provisions are necessary to address urban fertilizer contributions to nonpoint source nutrient loading; and
- The local government has documented its consideration of all relevant scientific information, including input from the DEP and the Department of Agriculture and Consumer Services (DACS), if provided, on the need for additional or more stringent standards. All documentation must become part of the public record prior to adopting the additional or more stringent standards.

This bill provides that any local government that has adopted its own fertilizer use ordinance before January 1, 2009, is exempt from the requirements of this section. However, ordinances adopted or amended after January 1, 2009, must include the provisions of the most recent version of the model fertilizer ordinance.

This bill creates s. 403.9339, F.S., and requires the DEP, working in cooperation with the Institute of Food and Agricultural Sciences of the University of Florida, to provide urban landscape best management practices training and testing throughout the state. The DEP may issue a certificate of training demonstrating that person has completed the course. In addition, this bill requires the DEP, in consultation with DACS and IFAS, to approve training and testing programs equivalent to or more comprehensive than the training provided by DEP. Existing approved programs must be reapproved no later than July 1, 2010. This section also provides that after receiving a certificate demonstrating completion of the DEP's best management practices training program or the equivalent, an urban landscape commercial fertilizer applicator can apply to DACS to receive a limited certification for urban landscape commercial fertilizer applicators and to apply fertilizer to urban landscapes⁶ throughout the state. In addition, urban landscape commercial fertilizer applicators with a limited certification are not subject to additional local testing.

This bill creates s. 482.1562, F.S., to require DACS to establish a limited certification category for urban landscape commercial fertilizer application. This bill provides that the DACS may adopt rules to implement the procedures and requirements of this section. A person seeking limited certification must provide DACS with a copy of the Urban Landscape Commercial Fertilizer Applicator Certificate of Training issued by the DEP. An application for certification must include a fee set by DACS that cannot be more than \$75 or less than \$25. Until DACS establishes a rule implementing this limited certification, the application fee will be \$25. The certification issued expires after four years and an application for recertification must be made at least 90 days before expiration. The application fee for recertification is the same as for initial certification; however, if the recertification application is more than 30 days late, a late renewal charge of \$50 per month will be assessed and must be paid in addition to the renewal fee. The application must also include proof of having completed four hours of continuing education, at least two hours of which must be regarding fertilizer best management practices. The certification provided for in this section does not authorize the following:

- The application of pesticides to turf or ornamentals;
- The operation of a pest control business; or
- The application of pesticides or fertilizers by unlicensed or uncertified personnel under the supervision of the certified person.

This bill also provides that DACS is authorized to provide information on the certification status of persons certified to other local and state government agencies and encourages DACS to create an on-line data base that lists all certified urban landscape fertilizer applicators. In addition, this bill provides that an urban landscape commercial fertilizer applicator must obtain a limited certification no later than January 1, 2014 in order to apply fertilizer to urban landscapes. This bill provides an exemption from

⁶ In this section, "urban landscape" means pervious non-agriculture areas on residential, commercial, industrial, institutional, highway rights-of-way or other urban lands that are planted with turf or horticultural plants.

the requirements of this section for yard workers who apply fertilizer to individual residential properties using only fertilizer and equipment supplied by the residential property owner or resident.

B. SECTION DIRECTORY:

Section 1: Amends s. 373.62, F.S., relating to water conservation and automatic sprinkler systems.

Section 2: Creates s. 403.9335, F.S., providing a short title for ss. 403.9335 – 403.9339, F.S.

Section 3: Creates s. 403.9336, F.S., relating to legislative findings.

Section 4: Creates s. 403.9337, F.S., providing definitions for "urban landscape".

Section 5: Creates s. 403.9338, F.S., relating to the adoption of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

Section 6: Creates s. 403.9339, F.S., relating to Urban Landscape Commercial Fertilizer Applicator Training Certificates.

Section 7: Amends s. 482.021, F.S., providing a definition for "urban landscape commercial fertilizer application."

Section 8: Creates s. 482.1562, F.S., relating to limited certification for urban landscape commercial fertilizer application.

Section 9: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	(FY 09-10) Amount / FTE	(FY 10-11) Amount / FTE	(FY 11-12) Amount / FTE
Pest control Trust Fund	\$65,000	\$12,500	\$12,500

According to the Department of Agriculture and Consumer Services, these figures are based on 2,600 initial certificates (\$25 per certificate), and 500 per year for years 2 and 3

2. Expenditures:

	(FY 09-10) Amount / FTE	(FY 10-11) Amount / FTE	(FY 11-12) Amount / FTE
Expenses	\$2,363	\$1,759	\$1,759
Contracted Services	<u>1,277</u>	<u>979</u>	<u>979</u>
Total	<u>\$3,640</u>	<u>\$2,738</u>	<u>\$2,738</u>

According to the Department of Agriculture and Consumer Services, these expenditures are for increased travel to conduct inspections, postage and programming costs.

This bill appears to have an indeterminate fiscal impact on the Department of Environmental Protection's (DEP's) expenditures by requiring the DEP to approve training programs and testing materials equivalent to or more comprehensive than the best management practices training program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill appears to increase local government expenditures by requiring local governments located within a watershed containing a body of water that is listed as impaired for nutrient loads to adopt the provisions of DEP's Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes.

In addition, it is anticipated that the costs of meeting the additional requirements of s. 373.62, F.S., will be absorbed by existing resources and programs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have a direct economic impact on the private sector by requiring a person who applies fertilizer for payment or other consideration to property with urban landscaping that is not owned by the applicator to obtain annually a limited certification established by DACS. The application fee for this limited certification can cost the applicant between \$25 and \$75 per year.

This bill provides for penalties for violations of s. 373.62, F.S., which will result in \$50 for a first offense, \$100 for a second offense, and \$250 for each subsequent offense. In addition, it is anticipated that the costs of maintaining properly operating automatic irrigation systems will be offset, partially or fully, by the savings from more efficient water use.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill grants rulemaking authority to the Department of Agriculture and Consumer Services to adopt rules implementing the limited certification for urban landscape commercial fertilizer application.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 19, 2009, the Agriculture and Natural Resources Policy Committee adopted one strike-all amendment to this bill. The strike-all amendment provides for the following:

- Encourages local governments to adopt and enforce the provisions in DEP's Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes.
- Requires local governments located within a watershed consisting of waters designated as impaired for nutrient load to adopt the provisions of DEP's Model Ordinance for Florida-friendly Fertilizer Use on Urban Landscapes, and allows them to adopt more stringent provisions if certain criteria are met.
- Requires urban landscape commercial fertilizer applicators to obtain a certificate demonstrating completion of the Green Industry Best Management Practices training program.
- Requires DACS and IFAS to approve training programs and testing materials.
- Requires DACS to establish a limited certification category for urban landscape commercial fertilizer application and to adopt rules.
- Encourages DACS to create an on-line database that lists all certified urban landscape fertilizer applicators.
- Provides that a person who violates any provision in chapter 482, F.S., is guilty of a misdemeanor of the second degree.

On March 27, 2009, the Civil Justice & Courts Policy Committee adopted one strike-all amendment to the bill. The strike-all amendment provided the following:

- Makes technical and grammatical changes;
- Adds provisions regarding automatic landscape irrigation;
- Requires licensed contractors who perform work on automatic landscape irrigation systems to test the operation of each inhibiting device, interrupting device or switch and install new devices or switches or repair the existing ones if they are not in proper operating condition;
- Directs the DEP to create a model ordinance regarding automatic landscape irrigation systems to be adopted by local governments;
- Requires local governments to adopt the model ordinance by October 1, 2010;
- Provides an exemption from adoption for local governments with more stringent requirements than the model ordinance;
- Requires funds generated from penalties under the ordinance to be used for administration and enforcement;
- Provides definitions;
- Changes the automatic expiration date of limited certification for urban landscape commercial fertilizers to four years after the date of issuance instead of one year;
- Requires an urban landscape commercial fertilizer applicator to obtain a limited certification no later than January 1, 2014;
- Provides an exemption for yard workers to apply fertilizer to individual residential properties using only fertilizer and equipment supplied from the property owner; and
- Removes the provision that any person who violates ch. 482, F.S., or any rules adopted pursuant to ch. 482, F.S., is guilty of a second degree misdemeanor punishable by a definite term of imprisonment not to exceed 60 days or a fine of \$500.

The bill was then found favorable as amended. This analysis is drafted to the bill as amended.

On April 14, 2009, the General Government Policy Council adopted two technical amendments. The first amendment corrected a scrivener's error by adding the word "not" to the sentence "penalties for operators of automatic landscape irrigation systems who do not properly install and maintain the required devices or switches." The second amendment removed the phrase "By January 1 of each year." This language was inconsistent with other provisions in the bill, which required fertilizer applicators to obtain the limited certification every four years instead of annually.